

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PRESTON DIAL FREEMAN, AND)	
TROY CHANCELLOR FREEMAN,)	
)	
Plaintiffs,)	CIVIL ACTION NO.
)	
VS.)	3:18-CV-0947-G
)	
FIDELITY BROKERAGE SERVICES,)	
LLC,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

Before the court is the motion of the defendant Fidelity Brokerage Services, LLC, ("Fidelity") to dismiss the claims of the plaintiffs (docket entry 19). For the reasons set forth below, the motion is denied.

I. BACKGROUND

This court's memorandum opinion and order of March 5, 2019, denying Fidelity's motion to compel arbitration and stay all proceedings, contains a detailed discussion of the facts of this case. *See generally* Memorandum Opinion and Order (docket entry 17).

II. ANALYSIS

"To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *In re Katrina*

Canal Breaches Litigation, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 570 (2007)), cert. denied, 552 U.S. 1182 (2008). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (citations, quotation marks, and brackets omitted). “Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *In re Katrina Canal*, 495 F.3d at 205 (quoting *Twombly*, 550 U.S. at 555) (internal quotation marks omitted). “The court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *Id.* (quoting *Martin K. Eby Construction Company, Inc. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004)) (internal quotation marks omitted).

The Supreme Court has prescribed a “two-pronged approach” to determine whether a complaint fails to state a claim under Rule 12(b)(6). See *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). The court must “begin by identifying the pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Id.* at 679. The court should then assume the veracity of any well-pleaded allegations and “determine whether they plausibly give rise to an entitlement of

relief.” *Id.* The plausibility principle does not convert the Rule 8(a)(2) notice pleading to a “probability requirement,” but “a sheer possibility that a defendant has acted unlawfully” will not defeat a motion to dismiss. *Id.* at 678. The plaintiff must “plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged -- but it has not ‘show[n]’ -- ‘that the pleader is entitled to relief.’” *Id.* at 679 (alteration in original) (quoting FED. R. CIV. P. 8(a)(2)). The court, drawing on its judicial experience and common sense, must undertake the “context-specific task” of determining whether the plaintiffs’ allegations “nudge” their claims against the defendant “across the line from conceivable to plausible.” See *id.* at 679, 683.

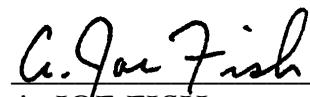
The thrust of the motion to dismiss is that the plaintiffs failed to state claims upon which this court could grant them relief. The court concludes, however, that Fidelity failed to show that the plaintiffs could prove no set of facts in support of their claims that would entitle them to relief. See *In re Katrina Canal Breaches Litigation*, 495 F.3d at 205.

III. CONCLUSION

For the reasons stated above, the motion to dismiss is **DENIED**.

SO ORDERED.

September 6, 2019.

A handwritten signature in black ink, appearing to read "A. Joe Fish".

A. JOE FISH
Senior United States District Judge